

ISSUE

The Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended, requires the Federal Government to pay 100% of tribal contract support costs (CSC) need. Congressional appropriations for the Indian Health Service (IHS) have provided funding for only 90% of CSC need.

BACKGROUND

Under the Indian Self-Determination and Education Assistance Act, Indian tribes are authorized to enter into contracts and compacts with the IHS (and the Bureau of Indian Affairs in the Department of Interior) to operate programs that have been directly operated by the Federal Government. The Act authorizes the IHS to provide funds to tribal contractors to pay for needed costs that are not included in the contract program amount. The IHS provides CSC to tribes in three categories: start-up and pre-award costs for one-time expenditures needed to assume operation of the program; direct CSC for unpaid costs directly associated with the program; and indirect costs that are the pooled administrative costs of tribes.

Full funding of tribal CSC has not been appropriated and has resulted in four congressional oversight hearings and litigation between several tribal governments and the IHS. Most tribes have historically taken the position that the law requires the Federal Government to pay 100% of tribal CSC and, if necessary, the IHS should use other parts of its appropriation to fund CSC at the 100% level. The IHS position is that the funds for CSC are subject to the availability of funding appropriated for CSC, and that to take funds from other IHS programs would have an adverse impact on administration and health services provided to non-compacting/contracting tribes. This difference in interpretation has led to congressional oversight hearings and litigation. The U.S. Court of Appeals (Federal Circuit) has affirmed the IHS position in their 1999 ruling that the Bureau of Indian Affairs could pay tribes less than 92% of their CSC need because their congressional appropriation provided insufficient funding to pay 100%. Congressional appropriations for CSC vary year-to-year; in FY 2000 the Congress appropriated funds for the IHS that covered 90% of CSC.

In June 1999, the GAO completed a study of CSC and published its report "Indian Self-Determination Act: Shortfalls in Indian Contract Support Costs Need to be Addressed." The National Congress of American Indians also published a report about CSC in July 1999. Both reports emphasized the importance of CSC to tribal governments and proposed options for addressing CSC issues.

SITUATION

In January 2000, the IHS adopted a revised policy, developed after extensive consultation with tribal leaders and representatives, governing its administration and allocation of CSC. The policy has received the support of tribal leaders, the Department of Health and Human Services, and most of the relevant congressional committees. However, the House Subcommittee on Interior Appropriations did not support the adoption of the policy because of concerns about allocation provisions within the policy.

OPTIONS/PLANS

The IHS continues to consult with tribes on CSC issues with the possibility of implementing policy changes that will become effective in FY 2002. Any changes to the present policy will be discussed with tribal leaders, the HHS, the OMB, and Congress before adoption and implementation.

ADDITIONAL INFORMATION

For referral to the appropriate spokesperson, contact the IHS Public Affairs Staff at 301-443-3593.

